√

18-391

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~565.~~ ~~613~~ 106

SPENCER TRASK, APPELLANT,

VS.

CONSTANTINE MAGUIRE, THE ST. LOUIS AND IRON-MOUNTAIN RAILROAD-COMPANY, THOMAS ALLEN, S. H. LAFLIN, G. B. ALLEN, SAMUEL COPP, S. GANDY, A. TRASK, AND H. G. MARQUAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF MISSOURI.

FILED DECEMBER 22, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 565.

SPENCER TRASK, APPELLANT,

VS.

CONSTANTINE MAGUIRE, THE ST. LOUIS AND IRON-MOUNTAIN RAILROAD-COMPANY, THOMAS ALLEN, S. H. LAFLIN, G. B. ALLEN, SAMUEL COPP, S. GANDY, A. TRASK, AND H. G. MARQUAND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICTS OF MISSOURI.

INDEX.

	Original.	Print.
Bill	1	1
Exhibit A to bill of complaint	41	17
O to bill of complaint	53	22
D to bill of complaint	55	23
E to bill of complaint	55	24
F to bill of complaint	56	25
G to bill of complaint	56	26
H to bill of complaint	57	27
I to bill of complaint	57	28
J to bill of complaint	58	29
K to bill of complaint	58	30
L to bill of complaint	59	31
M to bill of complaint	59	32
N to bill of complaint	60	33
Order for subpœna	60	34
Subpœna	62	34
Marshal's return on subpœna	63	34
Temporary restraining order	64	35
Hearing of application for an injunction	65	35
Application further heard, submitted to court, and taken under advisement	66	36
Injunction denied	67	36
Demurrer filed by defendant Maguire	68	36
Demurrer	68	36
Demurrer filed by defendant The St. Louis and Iron-Mountain Railroad; also demurrer filed by remaining defendants	71	38

	Original.	Print.
Demurrer submitted and sustained	71	38
Final decree	72	38
Appeal granted	72	38
Bond filed and approved	72	38
Demurrer of the defendant The St. Louis and Iron-Mountain Railroad-Company	72	38
Demurrer of defendants T. Allen, S. Copp, G. B. Allen, S. H. Laflin, A. Trask, H. G. Marquand, and S. Gandy	73	39
Bond of appeal	74	39
Clerk's certificate	77	40

1 **MISSOURI DISTRICTS,** *sct:*

Pleas before the honorable circuit court of the United States for the districts of Missouri, at the October term thereof, A. D. 1871.

SPENCER TRASK, COMPLAINANT,
ag'st
CONSTANTINE MAGUIRE ET AL. DEFENDANTS. } In chancery.

Be it remembered that, heretofore, to wit, on the sixteenth day of August, A. D. 1871, there was filed in the clerk's office of the circuit court of the United States for the districts of Missouri the following bill in equity in the above-entitled cause, to wit:

Bill.

UNITED STATES OF AMERICA,
Districts of Missouri, ss:

In the circuit court of the United States for the districts of Missouri.

To the judges of the circuit court of the United States for the districts of Missouri:

Spencer Trask, of the city of Brooklyn, and a citizen of the State of New York, complainant, brings this his bill against Constantine Maguire, of the city of St. Louis, and a citizen of the State of Missouri; the St. Louis and Iron Mountain Railroad Company, of the city of St.
2 Louis, and a citizen of the said State of Missouri; Thomas Allen, Sylvester H. Laflin, Gerard B. Allen, and Samuel Copp, jr., all of the said city of St. Louis, and citizens of the State of Missouri; Sheppard Gandy, of the city of New York, and a citizen of the State of *said State of* New York; Alanson Trask, of the city of Brooklyn, and a citizen of said State of New York; and Henry G. Marquand, of said city of New York, and a citizen of said State of New York, defendants.

And thereupon your orator complains and says that, by an act of the general assembly of the State of Missouri, entitled An act to incorporate the St. Louis and Iron Mountain Railroad Company, approved March 3d, 1851, a company was incorporated, to be called the St. Louis and Iron Mountain Railroad Company, with a capital stock of six millions of dollars, to be divided into shares of one hundred dollars each, the holders of which, their successors or assigns, were to constitute and be a body corporate and politic by the name and style aforesaid, and by that name were to have perpetual succession; might sue and be sued, plead and be impleaded, defend and be defended in all courts and places whatsoever; might make and use a common seal and the same renew and alter at pleasure; and were to be able in law and equity to make and enforce all kinds of contracts; might take, hold, use, possess, and enjoy the fee-simple or any other title or estate in any lands, tenements, or hereditaments, and the same sell and dispose of at pleasure; might make such by-laws, rules, and regulations as might be necessary or proper for carrying into effect the provisions and true intent and
3 meaning of that act, not repugnant to the Constitution of the United States or of the State of Missouri; that by said act of assembly power was given to said company to survey, locate, and construct a railroad from any point within the city of St. Louis, in said State of Missouri, to the Iron Mountain and Pilot Knob, both in said

State of Missouri, or to the vicinity of either of said points last-named, or to commence said road at any point on the line of the Pacific Railroad, intersecting the same and running from thence to the Iron Mountain and Pilot Knob, or to the vicinity of said points or either of them; and that it was in and by said act further provided that if at any time within ten years the said company should resolve to extend said railroad to the Mississippi River at Cape Girardeau or at any point below that city within the limits of the State of Missouri, or should resolve to extend said road into the southwestern part of said State, the right was thereby given said company to do so, and for that purpose power was thereby given said company to increase its capital stock to any amount necessary to complete such extension of said road.

And it was provided in and by said act that said company should organize within two years and commence the construction of its road within six years from the passage of said act, or forfeit all the rights granted under that act; that in and by said act of incorporation it was further provided that as soon as one thousand shares of the stock of said company should be subscribed the directors appointed by said
4 act of incorporation should cause an election to be held for the election of thirteen directors, and further, that whenever the aforesaid amount of one thousand shares of stock should be subscribed all the powers, privileges, rights, immunities, and benifits conferred or intended to be conferred by that charter should be invested in the holders of said shares; and that whenever any other portion of the capital stock should be subscribed for, the same should be vested in all subsequent subscribers, and that it was thereby further provided that every person who should cease to be a shareholder should cease to be a member of said company; and that the stock of said company should be exempt from all State and county taxes.

And your orator further says that, by another act passed by said assembly, amendatory of said act of incorporation, approved February 17th, 1853, it was, among other things, provided that all the engines, cars, wagons, machines, and other property belonging to said company, should be deemed a part of the capital stock of said company, and should be vested in the respective shareholders of the company forever according to their respective shares, and transferrable by them in the transfer of stock as personal property, and it was thereby, among other things, further provided that said company should have power from time to time to borrow such sums of money as might be necessary (subject to the prior lien of the State, if any State bonds had been loaned said company,)for the completion or extension of their said
5 railroad, and to issue and dispose of their bonds for any amount so borrowed, and to mortgage, if necessary, their corporate property or franchise, or any part thereof, to secure the payment of any debt contracted by the company for the purposes aforesaid; and, if deemed expedient, might confer upon the holders of any bonds issued as aforesaid the right to convert the amount of said bonds into stock of said company at any time not exceeding ten years from the date of the bond, under such regulations as the board of directors of said company might see fit to adopt. And your orator further says that, by another act afterwards passed by said assembly entitled "An act to amend the several acts incorporating the St. Louis and Iron Mountain Railroad Company," approved March 3d, 1857, it was, among other things, provided that it should be lawful for said St. Louis and Iron Mountain Railroad Company, in permanently establishing the line of said railroad south of the Pilot Knob, to locate the same so as to connect with

the Cairo and Fulton Railroad, and from any part or point in the line of said Cairo and Fulton Railroad to locate and construct a branch road to any point on the Mississippi River below Cairo, and also from any point on the main line, or as a continuation of the main line, or from any point on the line of the Cairo and Fulton Road, to construct a branch road to any point on the Mississippi River in New Madrid County, or to continue and establish the main line of said railroad from the Pilot Knob to any point on the Mississippi River below the mouth of the Ohio River, and to locate and construct branch roads from any
point on the line of said road not exceeding sixty miles in length,
6 and it was in and by said last-named act of assembly further
provided that, in all elections of president, directors, or other officers, or other votes by said stockholders of the said St. Louis and Iron Mountain Railroad Company every stockholder was to be allowed one vote for each share of stock owned less than six hundred, and for each share of stock so owned over six hundred shares said stockholder was to be allowed one vote for every three shares so owned in excess of six hundred.

And your orator further says, that the said St. Louis and Iron Mountain Railroad Company, within two years after the passage of said act of incorporation, duly and legally organized under and pursuant to said act of incorporation, and for the accomplishment of the purposes and objects of said act. And afterwards, and within six years from the passage of said act of incorporation, said company sold to divers persons to your orator unknown, divers shares of its capital stock, amounting in the aggregate, as your orator is informed and believes is true, to more than five thousand shares, and received from the subscribers the price paid for such stock; and within the said period of six years, relying upon the rights, privileges, franchises, and immunities granted and secured to it by means of the said several acts of assembly, said company located and commenced the construction of its railroad from the city of St. Louis, in the county of St. Louis, to the said Pilot Knob, in the now county of Iron, a distance of about eighty-seven miles, and with the proceeds of its stock sold and other available means, said com-
pany carried forward to completion the said line of road from St.
7 Louis to Pilot Knob and a branch road from the main line to
Potosi, in Washington County, about four miles long, and secured the right of way for the track of said main line and branch over divers tracts of land through which said railroad and branch pass, and acquired the title to divers lands needful for side-tracks, turn-outs, turntables, switches, stations, depots, machine-shops, and for other purposes, and built thereon divers side-tracks, turn-outs, turn-tables, switches, stations, depots, machine-shops, and other structures necessary for the successful operation of said road, and fully equipped the said road and branch road with divers locomotive-engines, cars, and other needful appliances; and at the time of the sale hereinafter mentioned, to the State of Missouri, said company had said railroad and its said branch so as aforesaid completed, with all of said rights of way, and said lands, and the said structures thereon, and said equipments in full possession, and was running and operating said road and its said branch.

And your orator further says that, at the time the said charter was granted, internal improvements in this State had scarcely reached their infancy. The necessity for extended lines of railroad for the opening and development of a vast domains was urgently felt. Capital, however, was scarce, and capitalists timid. To inspire confidence, and to

stimulate the investment of private capital in works of this sort, it became the policy and practice of the State, persevered in for years,
8 to lend its credit to corporations engaged in railroad enterprises, in the form of State bonds, issued to such corporations in some defined proportions, to the amount of capital derived from private sources; and thus it was, and to this end, the said general assembly passed divers laws making provision for lending the credit of the State to the said St. Louis and Iron Mountain Railroad Company, to aid it in the work of building its said railroad And among the laws so passed were the following, viz:

First. An act entitled "An act to expidite the construction of the Iron Mountain branch of the Pacific Railroad," approved December 25th, 1852.

Second. An act explanatory and amendatory of the said last-named act, approved February 23rd 1853; and—

Third. An act entitled "An act to aid in the construction of the St. Louis and Iron Mountain Railroad," approved March 3rd, 1855.

Fourth. An act entitled "An act to secure the completion of certain railroads in this State," passed 10th December, 1855.

Fifth. An act amendatory of the last-named act, approved March 3rd, 1857.

Sixth. An act entitled "An act in relation to the St. Louis and Iron Mountain Railroad Company," approved March 9th, 1859.

That, by authority of and pursuant to said laws, divers bonds of the State of Missouri for the payment by the State of divers large sums of money, with interest, were issued and delivered to said company; that, prior to the delivery of said bonds to said company it signified
9 its acceptance thereof to the secretary of state of said State of Missouri in the manner and form prescribed by said laws; and by force thereof, and by operation of said laws, it became and was the duty of said railroad company to pay as well the interest as the principal on said bonds as the same should, from time to time, become due and payable; and the said railroad and property of said company, and every part and section thereof, and its appurtenances, by means of its said certificate of acceptance, and by force of said laws, became and were pledged and mortgaged to said State to secure the payment of the principal and interest by said company on the bonds so issued and delivered to it. And power was thereby given, and it was thereby made lawful for the Governor of said State, in case of default by said company in the payment of either the interest or principal of said bonds, to sell said railroad and its appurtenances by auction to the highest bidder, or to buy in the same at such sale for the use and benefit of the State, subject to such disposition in respect to such road, or its proceeds, as the legislature might thereafter direct.

And your orator further states that the said railroad company having made default in the payment of the interest which had become due and payable on said bonds, and remaining thus in default for a number of years, the said general assembly passed an act entitled "An act
10 to provide for the sale of certain railroads and property by the governor, to foreclose the State's lien thereon, and to secure an early completion of the Southwest Branch Pacific, the Platte Country, the St. Louis and Iron Mountain, and the Cairo and Fulton railroads of Missouri," approved February 19th, 1866, by which, among other things, it is provided and made the duty of the governer to advertise the said St. Louis and Iron Mountain Railroad, with its appurtenances, rolling-stock, and property of every description, and all rights and franchises

thereto belonging, for sale, and to sell the same at auction to the highest bidder in pursuance of the provisions of the several acts creating a lien on said railroad, its appurtenances, rights and franchises, in favor of the State. And further, in and by said last-named act a board of commissioners composed of three members was established for the said St. Louis and Iron Mountain Railroad, and by the said last-named act it was made the duty of the said board of commissioners to attend the sale of said railroad, as advertized by the governor, and to bid in the same for the use and benefit of said State, for an amount not exceeding the amount of the liens on said road in favor of the State.

And it was thereby further provided that if said road should be struck off and sold to said commissioners, they were to take possession and hold the same, with its appurtenances and property, and manage,
11 operate, and dispose of the same in the manner provided for in
that act. And it was further made the duty of said board of commissioners, by said last-named act, within thirty days after they were appointed and qualified, to publish a notice of their appointment as such, and of their authority to take possession of or buy in said road, together with the lands belonging thereto, and again to sell the same, and were thereby required to invite proposals for the purchase of said road, lands, appurtenances, and franchises from them.

And it was in and by said act of March 19th, 1866, further provided that the companies or persons purchasing any of the roads therein named should have all the rights, franchises, privileges, and immunities which were had and enjoyed by the companies for whose default said roads were sold under the charter and laws amendatory thereof, subject, however, to the conditions and limitations herein contained and not inconsistent with the provisions of this [that] act."

And your orator further says that, afterwards, on the 27th day of September, 1866, the then governor of the State of Missouri, by authority of the several acts of assembly before cited, offered for sale at public auction to the highest bidder, at the east front door of the court-house, in said city of St. Louis, in pursuance to six months previous notice given and published in manner and form as prescribed by said acts of assembly, "the said St. Louis and Iron Mountain Railroad, so
12 far as the same is [was then] finished or projected, with all the rights,
privileges, and franchises to which said company is [was then] entitled under the several acts of the general assembly of this State made in reference to said railroad, or under any law, general or special, and all property whatever of said railroad company, road, road-bed, rolling-stock, fixtures, tools, and appurtenances, and all depots, buildings, furniture, machinery, materials, lands, lots, stocks, or other property whatsoever, real or personal, belonging to said railroad company or to which said railroad company has [then had] any claim in law or equity;" and that, no person bidding an amount equal to the amount of the State's lien, the said board of commissioners then and there bid in the said property as advertized, for the use and benefit of the said State of Missouri, at a sum less than the amount of the mortgage debt and interest.

And, thereupon, the said board of commissioners, as it was their duty to do under said act of 19th March, 1866, took possession and held the said railroad and property so by them bid in.

And the said board of commissioners, having published notice and invited proposals, as enjoined upon them by said act of 19th of March, 1866, and divers bidders having, in response to said invitation, submitted their several proposals to said board for the purchase of said road and property so as aforesaid offered for sale, and, among others sub-

mitting such proposals were Messrs. A. J. McKay, John C. Vogel, and Samuel Simmons who bid the sum of five hundred and
13 fifty thousand dollars, they, the said board of commissioners, afterwards, on or about the 8th day of November, 1866, the day appointed in said notice for the sale by them of said road, proceeded according to said act of 19th of March, 1866, to compare the several bids and proposals by them received; and did, afterwards, on or about the day and year last aforesaid, award the said railroad and every part and section thereof, its franchises and appurtenances, and all land and other property, real and personal to the said McKay, Vogel, and Simmons, they being the highest and best bidders, as decided by a majority of said board, whose bids were made in compliance with the terms and conditions of the first five section' of said act of 19th of March.

The said proposal of the said Vogel, Simmons, and McKay, as your orator is informed and believes is true, not only stated the price bid by them, but also, as required by said act of 19th of March, stated that their said proposal was based on the following terms and conditions to be performed by them, viz:

First. That the price or consideration bid should be payable, one-fourth on closing the contract, and the balance in five equal annual instalments, the first installment payable in one year, the second in two, the third in three, the fourth in four and the *the* fifth in five years thereafter, with six per cent. interest on the deferred payments, payable annually.

14 Second. That said railroad and all rolling-stock belonging thereto should be kept in good serviceable condition during the progress of the work to completion of said road; and—

Third. That the St. Louis and Iron Mountain Railroad should be finished to a point south of Pilot Knob to connect with the Cairo and Fulton Railroad line, in three years, and should be finished to the Mississippi River opposite to or below Columbus, Kentucky in five years after the date of sale of said railroad; and that the said bidders would expend in each and every year between the date of sale and the completion of the road, at least the sum of five hundred thousand dollars in the work of graduation, masonry, or superstructure on said extension.

And your orator further says that the said board of commissioners afterwards notified the said governor of their said award, who duly approved the same; and that, afterwards, on or about the   day of November, 1866, the said board of commissioners and the said purchasers executed in duplicate an agreement in writing embracing all the terms and stipulations to be performed by either party and on which the said sale and purchase was made, and which duplicate agreement was approved by the said governer, and one copy thereof was filed with said secretary of state. And, thereupon, on the day and year last aforesaid the said governor, as by the said act of March 19th it was
15 made his duty to do, in the name and on behalf of the State, executed and delivered to said purchasers a formal deed of conveyance, under the great seal of the State, of the things so purchased and sold.

And your orator further says that, afterwards, on or about the   day of January, 1867, the said McKay, Vogel, and Simmons sealed and delivered to the defendant, Thomas Allen, their certain deed of conveyance, whereby they granted, bargained, & sold, conveyed, and transferred to him, the said Thomas Allen, the same road, property, appurtenances, rights, immunities, and franchises, which had been so as aforesaid sold and conveyed to them and delivered the possession of the same to him, the said Allen.

And your orator further says that, afterwards, on or about the 26th day of July, 1867, the said Thomas Allen and other persons, by authority of and pursuant to an act of said general assembly entitled "An act authorizing the incorpo'tion of the purchaser or purchasers of any railroad, or of any part, section, or branch thereof, which has heretofore or hereafter may become forfeited to and sold by the State," approved March 20th, 1866, associated and incorporated themselves together in certain articles of incorporation by them respectively subscribed, for the purpose of taking possession of the property, rights, and franchises, so as aforesaid
sold and transferred by said State; and of enabling him, the said
16 Allen, and his said associates to complete, furnish, equip, operate,
manage, and control said road and the property, franchises, and appurtenances thereto belonging, or in any wise appertaining. And in their said articles of incorporation they adopted and designated as the name of their corporation "The St. Louis and Iron Mountain Railroad Company." And in said articles also stated one hundred and twenty miles or thereabouts, as the number of miles requisite to be built to complete said railroad, reserving the right to build a branch to the Mississippi River and to the Ark. State line in addition; and one hundred years as the number of years the said corporation was to continue; fixed and determined the amount of the capital stock of said corporation at ten millions of dollars, and one hundred thousand as the number of shares of which said capital stock should consist; and stated the names and places of residence of the seven directors chosen by them to manage the affairs of the company for the first year, and until others should be chosen in their places; and the requisite amount of stock having been subscribed and the requisite amount paid thereon, and the requisite affidavit and proof thereof having been made, the said articles of incorporation were, afterwards, on said 29th day of July, 1867, filed in the office of the secretary of state of said State of Missouri. And
your orator is advised that from and after the filing of said
17 articles the said company became and was and now is a body
corporate, empowered to act as such in all matters pertaining to the objects of its creation.

And your orator further says that the said Thomas Allen then and there, in due form of law assigned, transferred and set over to the said last-mentioned corporation the said railroad with all the other property, rights, franchises, privileges, immunities, and appurtenances so by him acquired from said McKay, Vogel, and Simmons.

And your orator further states that, by another act of said general assembly, entitled "An act to confirm the title of the St. Louis and Iron Mountain Railroad to Thomas Allen, his heirs and assigns, and to deliver possession thereof to the St. Louis and Iron Mountain Railroad Company, organized as a corporation on the 29th day of July, 1867, and to approp'iate certain funds for the building of a railroad from Pilot Knob to the State line of Arkansas," approved March 17th, 1868, for divers good and valuable considerations in said act mentioned, moving from the said Allen and said existing railroad company to said State, the ownership of all of said St. Louis and Iron Mountain Railroad hereinbefore mentioned, and *of* all of the property and estate, rights, franchises, privileges, and immunities of whatever kind theretofore belonging to the said defunct corporation, was thereby forever vested in and
confirmed to the said Thomas Allen, and to his heirs and as-
18 signs, subject to a certain mortgage and lien in said last-named
act mentioned.

And your orator insists that the said St. Louis and Iron Mountain Railroad Company first incorporated has, by reason of the matters and things hereinbefore alleged, become and is defunct, and all of the property, estates, rights, immunities, and franchises whatever which it had, have passed to and become vested in the defendant, the St. Louis and Iron Mountain Railroad Company, last incorporated and now existing, as completely and effectually to all intents and purposes as the same existed in said defunct corporation before it made default in the payment of said bonds and interest thereon.

And your orator further says that the defendant, the said existing railroad corporation, upon its incorporation as aforesaid, duly organized and commenced the prosecution of the business of its creation; and in the prosecution of its said business it has sold divers large amounts of its capital stock, exceeding in the aggregate, as your orator is informed and believes is true, nine millions of dollars thereof; and within the times limited by said acts of assembly it extended and finished its said line of railroad south, first to a junction with the Cairo and Fulton Railroad, and thence to a point on the Mississippi River opposite Columbus, Kentucky, expending in each year more than 500,000 dolls. in graduation, masonry, & superstructure. That, in addition to
19 the property and things derived from the defendant, Allen, it has acquired divers lands and large numbers of locomotive-engines, tenders, cars, trucks, wagons, and other rolling-stock, implements and machinery necessary and useful for the successful prosecution of its business; has erected large numbers of station-houses, depots, and other buildings and erections required for the convenient dispatch of its business, and for more than two years past has been and still is operating its said road daily, the entire distance from the city of St. Louis to the said terminus opposite Columbus, in the carrying of passengers, freights, United States mails, and express matter, deriving therefrom large gains and profits for the use and benifit of its stockholders.

It is also, and for about one year last past has been, building a branch road, extending from Pilot Knob to the northern boundary of Arkansas, and has expended, and is necessarily expending in the work of the construction of said branch large sums of money daily.

And your orator further says that, in order to enable said new company to carry su'cessfully forward the work of extending, completing, and operating its said railroad, it became necessary to borrow large sums of money, and as a means to this end the said company sealed and delivered to the Farmer's Loan and Trust Company of New York its certain deed of mortgage, with power of sale, bearing date the 1st day of August, 1867, whereby it granted, sold, conveyed, and trans-
20 ferred to said mortgagee the whole of the property and franchises of the mortgagor of whatever nature or kind, present as well as prospective, (excluding and excepting only any branch or branches of its said railroad which might be thereafter projected or constructed,) which said mortgage was made expressly to secure the payment of the principal on the 1st day of August, 1892, and the interest semi-annually of the first days of August and February in each year, of certain bonds then about to be issued by said existing company to raise money—said bonds being each for the payment of one thousand dollars, with seven per cent. interest, and the whole number thereof not to exceed four thousand; and, by the terms and provisions of said deed of mortgage, it is the duty of the mortgagee or its successor in the trust, in case the interest or any of the bonds so to be issued should not be paid by the mortgagor when the same should become due, and if such interest should

remain in arrears for three months, or in case the principal of said bonds or any of them, should not be paid at their maturity, then it was thereby made lawful for said mortgagee, on the written request of the holders of not less than one-tenth part of said bonds then outstanding, to take possession of the mortgaged property and franchises, and to hold the same, and, on the written request of the holders of at least one-third of the bonds so issued and then outstanding, unpaid, to cause said mort-
gaged property and franchises to be sold at public auction, and
21 the property and franchises sold, to be conveyed to the purchaser
thereof; which said deed of mortgage was duly acknowledged and certified, and was afterwards recorded in the recorder's office of the several counties through which said railroad runs. The original not being in the possession or power of your orator, he files herewith a certified copy of the record of the same, marked "Exhibit A."

And your orator further says that the said mortgagor has issued and sold the whole number of the bonds provided for in such deed of mortgage, which are held and owned by capitalists, East, and elsewhere, the semi-annual interest on which, as the same has from time to time become due, the said mortgagor has paid and satisfied, and the rights and interests of the stockholders have thus been protected and preserved from forfeiture and sale under said mortgage.

And your orator further states that he is the lawful and rightful owner of two hundred and twenty-five shares of the capital-stock of the said existing St. Louis and Iron Mountain Railroad Company, twenty-five of which shares he acquired on the 15th day of February, 1869, one hundred on the 1st of April, 1871, and the remaining one hundred on the 22nd of May, 1871, as will more fully appear by the three certificates of stock herewith filed, numbered respectively, 216, 649, and
786, and as owner of said stock, your orator is interested in the
22 successful operations of said corporation, and in the preservation
of its rights, property, and franchises under its charter and the laws of the land.

Your orator further says that he is advised that, by the laws of the land, and especially by force of the provisions of the several laws hereinbefore cited, the property of every description of the said existing corporation is part and parcel of the capital-stock of said corporation and that the several acts of the general assembly hereinbefore specified in connection with the acts and proceedings of the State officials hereinbefore mentioned, constitute a legal and binding contract on the part of the State of Missouri, whereby it and all its officers and agents are restrained and inhibited from imposing any State and county tax whatever on said capital-stock, or on the property represented by the stock. Yet, notwithstanding the rights and immunities thus secured to the said new corporation, and which it is entitled to have and enjoy unmolested, your orator regrets to have to say that the board of assessors of St. Louis County, in said State of Missouri, on or about the year 1868, unlawfully, as your orator is advised, and in disregard of the said rights, immunities, and franchises of said corporation, and of the stockholders therein, and without the consent or approvel of said corporation or its stockholders, listed in the assessor's book, of that county, the following
described property for taxation, for the year 1868, against the
23 "Iron Mountain Railroad—Thomas Allen in charge," and placed
thereon the following valuations, that is to say:

Track to Meremec	**60,000**
Machine-shop	**40,000**
4 locomotives at 8,000	**32,000**

And your orator insists that the said St. Louis and Iron Mountain Railroad Company first incorporated has, by reason of the matters and things hereinbefore alleged, become and is defunct, and all of the property, estates, rights, immunities, and franchises whatever which it had, have passed to and become vested in the defendant, the St. Louis and Iron Mountain Railroad Company, last incorporated and now existing, as completely and effectually to all intents and purposes as the same existed in said defunct corporation before it made default in the payment of said bonds and interest thereon.

And your orator further says that the defendant, the said existing railroad corporation, upon its incorporation as aforesaid, duly organized and commenced the prosecution of the business of its creation; and in the prosecution of its said business it has sold divers large amounts of its capital stock, exceeding in the aggregate, as your orator is informed and believes is true, nine millions of dollars thereof; and within the times limited by said acts of assembly it extended and finished its said line of railroad south, first to a junction with the Cairo and Fulton Railroad, and thence to a point on the Mississippi River opposite Columbus, Kentucky, expending in each year more than 500,000 dolls. in graduation, masonry, & superstructure. That, in addition to
19 the property and things derived from the defendant, Allen, it
has acquired divers lands and large numbers of locomotive-engines, tenders, cars, trucks, wagons, and other rolling-stock, implements and machinery necessary and useful for the successful prosecution of its business; has erected large numbers of station-houses, depots, and other buildings and erections required for the convenient dispatch of its business, and for more than two years past has been and still is operating its said road daily, the entire distance from the city of St. Louis to the said terminus opposite Columbus, in the carrying of passengers, freights, United States mails, and express matter, deriving therefrom large gains and profits for the use and benifit of its stockholders.

It is also, and for about one year last past has been, building a branch road, extending from Pilot Knob to the northern boundary of Arkansas, and has expended, and is necessarily expending in the work of the construction of said branch large sums of money daily.

And your orator further says that, in order to enable said new company to carry su'cessfully forward the work of extending, completing, and operating its said railroad, it became necessary to borrow large sums of money, and as a means to this end the said company sealed and delivered to the Farmer's Loan and Trust Company of New York its certain deed of mortgage, with power of sale, bearing date the 1st day of August, 1867, whereby it granted, sold, conveyed, and trans-
20 ferred to said mortgagee the whole of the property and franchises
of the mortgagor of whatever nature or kind, present as well as prospective, (excluding and excepting only any branch or branches of its said railroad which might be thereafter projected or constructed,) which said mortgage was made expressly to secure the payment of the principal on the 1st day of August, 1892, and the interest semi-annually of the first days of August and February in each year, of certain bonds then about to be issued by said existing company to raise money—said bonds being each for the payment of one thousand dollars, with seven per cent. interest, and the whole number thereof not to exceed four thousand; and, by the terms and provisions of said deed of mortgage, it is the duty of the mortgagee or its successor in the trust, in case the interest or any of the bonds so to be issued should not be paid by the mortgagor when the same should become due, and if such interest should

remain in arrears for three months, or in case the principal of said bonds or any of them, should not be paid at their maturity, then it was thereby made lawful for said mortgagee, on the written request of the holders of not less than one-tenth part of said bonds then outstanding, to take possession of the mortgaged property and franchises, and to hold the same, and, on the written request of the holders of at least one-third of the bonds so issued and then outstanding, unpaid, to cause said mortgaged property and franchises to be sold at public auction, and
21 the property and franchises sold, to be conveyed to the purchaser
thereof; which said deed of mortgage was duly acknowledged and certified, and was afterwards recorded in the recorder's office of the several counties through which said railroad runs. The original not being in the possession or power of your orator, he files herewith a certified copy of the record of the same, marked "Exhibit A."

And your orator further says that the said mortgagor has issued and sold the whole number of the bonds provided for in such deed of mortgage, which are held and owned by capitalists, East, and elsewhere, the semi-annual interest on which, as the same has from time to time become due, the said mortgagor has paid and satisfied, and the rights and interests of the stockholders have thus been protected and preserved from forfeiture and sale under said mortgage.

And your orator further states that he is the lawful and rightful owner of two hundred and twenty-five shares of the capital-stock of the said existing St. Louis and Iron Mountain Railroad Company, twenty-five of which shares he acquired on the 15th day of February, 1869, one hundred on the 1st of April, 1871, and the remaining one hundred on the 22nd of May, 1871, as will more fully appear by the three certificates of stock herewith filed, numbered respectively, 216, 649, and 786, and as owner of said stock, your orator is interested in the
22 successful operations of said corporation, and in the preservation
of its rights, property, and franchises under its charter and the laws of the land.

Your orator further says that he is advised that, by the laws of the land, and especially by force of the provisions of the several laws hereinbefore cited, the property of every description of the said existing corporation is part and parcel of the capital-stock of said corporation and that the several acts of the general assembly hereinbefore specified in connection with the acts and proceedings of the State officials hereinbefore mentioned, constitute a legal and binding contract on the part of the State of Missouri, whereby it and all its officers and agents are restrained and inhibited from imposing any State and county tax whatever on said capital-stock, or on the property represented by the stock. Yet, notwithstanding the rights and immunities thus secured to the said new corporation, and which it is entitled to have and enjoy unmolested, your orator regrets to have to say that the board of assessors of St. Louis County, in said State of Missouri, on or about the year 1868, unlawfully, as your orator is advised, and in disregard of the said rights, immunities, and franchises of said corporation, and of the stockholders therein, and without the consent or approvel of said corporation or its stockholders, listed in the assessor's book, of that county, the following described property for taxation, for the year 1868, against the
23 "Iron Mountain Railroad—Thomas Allen in charge," and placed
thereon the following valuations, that is to say:

Track to Meremec	**60,000**
Machine-shop	**40,000**
4 locomotives at 8,000	**32,000**

13 locomotives at 5,000	65, 000
200 freight-cars at 250	50, 200
16 passenger cars at 800	12, 800
Total	260, 000

And afterwards, about the year aforesaid the president of the said board of assessors made out and delivered to the clerk of the St. Louis County court what purported to be a fair copy of said assessment-book but which, so far as this assessment was concerned, was not a copy; that it exhibited only the said aggregate valuation (260,000) on the line of "personal," wholly omitting the property listed whose several valuations made up said aggregate sum.

And the said clerk of said county court, afterwards, about the year aforesaid, without authority of law and contrary to law, as your orator is advised, added to the said copy of said assessment-book, the following as taxes upon the said assessment, viz: For State purposes, one-half of one per cent. upon said total valuation, amounting to 1,300 dollars; for county purposes, $\frac{60}{100}$ of one per cent., amounting to
1,560 dollars; for school purposes in the city of St. Louis, $\frac{40}{100}$ of
24 one per cent., amounting to 1,040 dollars; for city purposes of the
city of St. Louis, $1\frac{35}{100}$ per cent., amounting to 3,510 dollars: the
whole aggregating 7,410 dollars. And the said clerk upon making said additions then delivered said book so added to, to the county auditor of said county.

And your orator further says that the said board of assessors with like disregard of the rights, immunities, and franchises of the said corporation and of the stockholders therein, as your orator is advised, and without the consent or approval of said corporation, as he is informed and believes is true, afterwards, about the year 1869, listed in the assessor's book of the said county of St. Louis, the following described property as being situate in the city of St. Louis for taxation, for the year 1869, against the Iron Mountain Railroad, Thomas Allen in charge, and placed thereon the following valuations, that is to say:

Track to Meremec	60,000
Machineshop	40,000
4 locomotives at 8,000	32,000
13 locomotives at 5,000	65,000
200 freight cars at 250	55,200
16 passenger cars at 800	12,800
Total	260,000

and also in the same assessor's book the following described property
as being situate in Carondelet Township, for taxation for the
25 year 1869, against "The Iron Mountain Railroad," and placed
thereon the following valuations, that is to say:

In Finestown, lots 6, 7, 8, 9, and 10, in block 1, and lot 10, in block 2, valued at 5 dollars each		30
South Carondelet sub., block	3	200
Eilers	6	1,370
Do	6	360
Do	6	450
Do	21	16,420
Do	22	40,420
Total		**59,250**

And afterwards, about the year last aforesaid, the president of said board made out and delivered to the clerk of said county court what purported to be a fair copy of said last-named assessment-book, but which, in point of fact, was not a copy, so far as the assessment of the property which purported to be situate in the city of St. Louis was concerned, in that it exhibited only the said aggregate valuation (260,000) on the line of "personal," wholly omitting the property listed, whose several valuations made up said aggregate sum; and the said clerk, afterwards, about the year last aforesaid without authority of law and contrary to law, as your orator is advised, added to the said copy of
26 the said last-named assessment-book the following as taxes upon
the said last-mentioned assessment, viz:

First. As to the property purporting to be within the city of St. Louis, for State purposes, one-half of one per cent upon said total valuation of 260,000, amounting to 1,300 dollars; for county purposes, $\frac{45}{100}$ of one per cent., amounting to 1,170 dollars; for school purposes in the city of St. Louis, $\frac{40}{100}$ of one per cent.. amounting 1,040 dollars; for city purposes of the city of St. Louis, $1\frac{50}{100}$ per cent., amounting to 3,900 dollars: the whole aggregating 7,410 dollars.

Second. As to the property purporting to be in Carondelet Township, for State purposes, one-half of one per cent. upon said total valuation of 59,250, amounting to $296\frac{25}{100}$ dollars; and for county purposes, $\frac{45}{100}$ of one per cent., amounting to *to* $266\frac{62}{100}$ dollars. And the said clerk upon making said last-named addition then delivered the said book, so as last-aforesaid added to, to the said auditor.

And your orator further says that the said board of assessors again, without the consent or approval of said corporation, as he is informed and believes is true, and without authority of law, as he is advised, afterwards, about the year 1870, listed in the assessors' book of said county of St. Louis, for taxation against the "Iron Mountain Railroad" for the year 1870, the following parcels of property, and placed thereon the fol-
27 lowing valuations, that is to say:

First. As being in Carondelet Township: Lots 6, 7, 8, 9, and 10, in block No. 1, and lot 10, in block No. 2, in Finestown, valued at 5 dollars each	$30
Block 3, S., St. Louis sub	$200
Total	$230

Second. As being in Carondelet Township, within the limits of the city of Carondelet, block 6, 7, 21, 22, and F. Eilers addition, valued in the aggregate, at 79,940 dollars.

Third. As being in the city of St. Louis: Steamer St. Louis, of St. Louis, valued at 20,000 dollars.

Fourth. As being in the city of St. Louis: A lot of ground in the city block 863, valued at 4,770 dollars.

Fifth. As being in the city of St. Louis: Two lots of ground, one in city block 723, valued at 8,730 dollars, and the other in city block 867, valued at 5,620 dollars. The total valuation of the two being 14,350 dollars.

Sixth. As being in the city of St. Louis: One lot in city block 876, valued at 3,600 dollars.

Seventh. As being in the city of St. Louis: Ten lots of ground, one in
each of the following city blocks, viz: Blocks 701, 706, 707, 714, 864,
28 865, 866, 880, 881, and 882, valued in the aggregate at the sum
of 66,240 dollars.

Eighth. As rolling-stock & track at large: Rolling-stock and iron track, valued at 481,000 dollars.

And afterwards, about the year last aforesaid, the said president of said board made out and delivered to the clerk of said county court a copy of said last-named assessment-book.

And the said clerk afterwards, about the year last aforesaid, without authority of law and contrary to law, as your orator is advised, added to the said copy of the said last-named assessment-book the following as taxes upon the several lists of property, so as aforesaid listed for taxation for the year 1870, viz:

First. As to the list as being in Carondelet Township. Total valuation, 230 dollars, he added—

State tax	$1 15
County tax	92
Total	$2 07

Second. As to the list as being in Carondelet Township, within the limits of the city of Carondelet, total valuation 79,940 dollars, he *he* added—

State tax	399$\frac{70}{100}$ dollars.
County tax	319$\frac{76}{100}$ dollars.
School tax	319$\frac{76}{100}$ dollars.
City tax	599$\frac{55}{100}$ dollars.
Total	1,638$\frac{70}{100}$ dollars.

Third. As to the list of the steamer St. Louis, valuation 20,000 dollars, he added State tax, 100 dollars.

29 Fourth. As to list covering lot in city block 863, valuation 4,770 dollars, he added—

State tax	23$\frac{85}{100}$ dollars.
County tax	19$\frac{08}{100}$ dollars.
School tax	19$\frac{08}{100}$ dollars.
City tax	71$\frac{55}{100}$ dollars.
Total	133$\frac{56}{100}$ dollars.

Fifth. As to lots in city blocks 723 and 867, total valuation 14,350 dollars, he added—

State tax	71$\frac{75}{100}$ dollars.
County tax	57$\frac{40}{100}$ dollars.
School tax	57$\frac{40}{100}$ dollars.
City tax	215$\frac{25}{100}$ dollars.
Total	401$\frac{80}{100}$ dollars.

Sixth. As to lot in city block 876, valuation 3,600 dollars, he added—

State tax	18$\frac{00}{100}$ dollars.
County tax	14$\frac{40}{100}$ dollars.
School tax	14$\frac{40}{100}$ dollars.

City tax	$54\frac{00}{100}$ dollars.
Total	$100\frac{80}{100}$ dollars.

Seventh. As to list covering ten lots in ten several city blocks, total valuation 66,240 dollars, he added—

State tax	$331\frac{20}{100}$ dollars.
County tax	$264\frac{96}{100}$ dollars.
School tax	$264\frac{96}{100}$ dollars.
City tax	$993\frac{60}{100}$ dollars.
Total	$1,854\frac{72}{100}$ dollars.

30 Eighth. As to list covering rolling-stock and iron track, valuation 481,000 dollars, he added—

State tax	$2,405\frac{00}{100}$ dollars.
County tax	$1,924\frac{00}{100}$ dollars.
School tax	$1,924\frac{00}{100}$ dollars.
City tax	$7,215\frac{00}{100}$ dollars.
Total	$13,468\frac{00}{100}$ dollars.

And the said clerk upon making the said last-named additions then delivered said book, so as last aforesaid added to, to the said auditor.

And your orator further says that said county auditor after the delivery of said several assessment books to him as aforesaid, caused to be made out and delivered to the collector of said county of St. Louis, eleven several tax-bills of the taxes so as aforesaid levied, copies of which said several bills are herewith filed and marked respectively, Exhibits D, E, F, G, H, I, J, K, L, M, and N, and prayed to be taken and considered as part of this bill.

And your orator further says, that he is informed and believes it is true, and therefore charges the fact to be that said several tax-bills came to the hands of the defendant Constantine Maguire, prior to the 31st day of December, 1870, he then being, and still being county collector of said county of St. Louis, and although he well knew that the attorney-general of said State of Missouri had long before advised the executive officers of the State that the property and effects of the defendant, the existing St. Louis and Iron
31 Mountain Railroad Company was, by law, exempt from taxation for State and county purposes, and that, upon that advice the said executive officers had wholly abandoned any pretence of right to enforce payment of the taxes herein complained of; yet he, the said Constantine, on or about the 13th day of July last past, under the pretended authority of the said eleven tax bills, and without any other warrant or authority whatever, for the purpose of compelling payment of said tax-bills and certain claimed interest, penalties, and costs thereon, levied upon, seized, and took into his custody the following property of the St. Louis and Iron Mountain Railroad Company, the defendant, to wit: Sixteen locomotive-engines and tenders, one first-class passenger-car, one second-class passenger-car, and one baggage-car, of the value of at least two hundred thousand dollars; and afterwards, on or about the second day of this present month of August, he the said Maguire, gave notice, by publication in certain newspapers of the city of St. Louis,

that he would, on the 17th day of the present month, sell the said property so levied upon, at auction, to the highest bidder, for cash, to pay said pretended taxes, and the pretended interest, penalties, and costs; the whole sum claimed amounting to about fifty thousand dollars; and he, the said Maguire, threatens to sell, and, as your orator believes, will
sell, the said property at the said time appointed for the sale of
32 the same, unless restrained by the order of this honorable court
from doing so.

Complainant files herewith a copy of said printed advertisement, marked and made Exhibit O. in the case.

And, now, your orator insists that the pretended taxes attempted to be enforced by the defendant Maguire, are not, nor ever were, assessed or levied, against the defendant The St. Louis and Iron Mountain Railroad Company, and that the same do not purport to be, and are not, a charge against said company. But if it should be held that the effect of the actions of the assessing officers was to charge said taxes against said railroad company, still said taxes were illegally assessed, and are not, nor are any part of them, lawfully due from nor payable by the said railroad company, as your orator is advised, because of the exemption of said company and of its property from taxation, secured by its contract with the State of Missouri, as hereinbefore stated, under its charter and the laws of said State relating to said company.

But again, if the exemption from taxation here insisted upon were untenable, still, because of the matters of fact hereinafter stated, the taxes charged on said several tax-bills are illegal and void, and not collectable or payable by law, as your orator is advised.

First. As to Exhibit D, tax-bill No. 3675, all of the property on
33 which the taxes of 7,410 dollars in that bill mentioned were raised,
except about $\frac{3}{25}$ of the track to Meremec, during the whole of the year for which the taxes of that bill were assessed and levied, belonged and had its domicil outside and beyond the limits of the city of St. Louis, as your orator is informed and believes is true, and therefore charges the fact so to be; and was in nowise, in any event, as your orator is advised, subject or liable to be taxed for the purposes of the said city of St. Louis, or for the purposes of schools in said city; and yet the said bill embraces a city tax of 3,510 dollars, for the purposes of said city of St. Louis, and a school-tax of 1,040 dollars for the use of schools in said last-named city.

Second. As to Exhibit E., bill No. 467, all the property on which the taxes in that bill mentioned were raised, except about three twenty-fifths ($\frac{3}{25}$) of the track to the Meremec, during the whole of the year for which the taxes of that bill were assessed and levied, belonged and had its domicil outside and beyond the limits of said city of St Louis, as your orator is informed and believes is true, and therefore charges the fact so to be; and was, in nowise, in any event, as your orator is advised, subject or liable to be taxed for the purposes of said city of St. Louis;
and yet, the said last-named bill embraces a city-tax of 3,900
34 dollars, for the purposes of said city of St. Louis, and a school-
tax of 1,040 dollars, for the use of schools in said city of St. Louis.

Third. As to Exhibit F, bill 439, two of the parcels of ground in that bill taxed, to wit: Blocks 21 and 22, assessed at the aggregate sum of 56,840 dollars, are the same property, (as your orator is informed and believes is true, and therefore states the fact so to be,) assessed in said Exhibit E, as "machine-shop," and valued at 40,000 dollars; and so, the same property is twice taxed the same year; and the tax is therefore illegal and void, as your orator is advised.

Fourth. As to Exhibit N, tax-bill No. 510, all the property on which the taxes (13,468 dollars) in that bill mentioned were raised, except about three two hundred and thirtieths, ($\frac{3}{230}$) of the iron track, during the whole of the year for which the taxes of that bill were assessed and levied, belonged and had its domicil, as your orator is informed and believes is true, and therefore states the fact to be, outside and beyond the limits of said city of St. Louis, and was in nowise, in any event, as your orator is advised, subject or liable to be taxed for the purposes of said city; and yet, the said last-named bill, embraces a city-tax of 7,215 dollars, for the purposes of said city of St. Louis, and a school-tax of 1,924 dollars, for the use of schools in said last-named city. And furthermore, all of the iron track taxed in said bill, Exhibit N, ex-
35 cept about $\frac{25}{230}$ thereof, during the whole of the year for which
the taxes of said bill were assessed and levied, was outside and beyond the limits of the county of St. Louis; and, as to the part so beyond said county limits, the same was in nowise subject to taxation in said county of St. Louis, as your orator is advised; and yet the same is taxed in and by said bill, not only for State and county purposes, in St. Louis County, but for city and school purposes in said city of St. Louis; and, as to so much of the taxes of said bill as concerns property beyond the limits of St. Louis County, the same is, as your orator is advised, in any event, utterly void and of no force.

And your orator further says that the possession and use, by the said railroad company, of said locomotives, and tenders, and cars, so seized by the defendant Maguire, are essential to the efficient and successful transaction of the lawful business of said company; that substitutes for them, especially for the locomotives, could not be procured or had for months to come, and in the meantime the business of said company would become greatly hindered, crippled, and broken up, and great loss and injury would be sustained by it in the loss of the profits of its business, and especially in the loss of profits of divers existing contracts with the Government and others for the carrying of the United
36 States mails and for the transportation of ores, metals, and other
freights to *and* come from the mines and depots along the line of its road, which loss and injury could not, as your orator is advised, be ascertained or measured by any rules or standards provided by the law; and furthermore, the deprivation of said company of its said engines, tenders, and cars, would take from it the means of raising funds requisite to meet its debts as they mature, and particularly its obligations to the holders of its said mortgage-bonds, whereby the property, rights, and franchises of the company would be exposed to great danger of becoming lost, as well to the corporation as to the stockholders, by a forfeiture and sale of the same, under the said mortgage, to said Farmers' Loan and Trust Company. That, on being informed of the demand of said Maguire, and of his proceedings to enforce payment of said taxes, your orator desiring, by reason of his interest as a stockholder, that the collection of said taxes should be prevented, and that the question of their legality and of the right of the State to tax the property of said company should be tested, he, as such stockholder of said St. Louis and Iron Mountain Railroad Company, requested the board of directors of said company at once, in the interest of the company and its stockholders, to institute and prosecute all such legal proceedings as
37 might be necessary to prevent the collection of said taxes and to
arrest the threatened sale, and to test the legality of said taxes and the right of the State to tax the property of said corporation, but the said board, while they expressly admitted the illegality and injus-

tice of said taxes, utterly refused to comply with your orator's said request, and have taken no steps, and, so far as your orator knows, believes, or has been informed, intend to take no steps to prevent the collection of said unjust and illegal taxes, or to arrest the said threatened sale, or to test the legality of said taxes, or the right of the State to tax the property of said corporation; and by their conduct and omissions in the premises they have endangered and are endangering the rights of your orator as a stockholder, and are exposing him and other stockholders to great and irreparable loss and injury. The said board of directors consist of Thomas Allen, Sheppard Gandy, Alanson Trask, H. G. Marquand, Sylvester H. Laflin, Gerrard B. Allen, and Samuel Copp, who, with the said Constantine Maguire and the said existing St. Louis and Iron Mountain Railroad Company, are prayed to be made defendants to this bill.

And now your orator, further complaining, says that all of the said actings, doings, and pretences of the said defendants are contrary to equity and good conscience, and tend to the manifest wrong, injury, and oppression of your orator in the premises. In tender
38 consideration whereof, and forasmuch as your orator is remidiless in
the premises, at and by the strict rules of the common law, and is relievable only in a court of equity, where matters of this nature are properly cognizable and relievable; to the end, therefore, that your orator may have that relief which he can only obtain in a court of equity, may it be declared by your honors in this honorable court, that the said several taxes are illegal and unjust, and in nowise chargeable against or collectable from the St. Louis and Iron Mountain Railroad Company, and that the property and capital stock of the said company are in nowise liable for or chargeable with State or county taxes in said State of Missouri, or by the laws thereof; and may it please your honors to grant unto your orator, not only a writ of injunction, to be directed unto the said Constantine Maguire to restrain and enjoin him, his servants and agents, from possessing, intermeddling with selling, or otherwise disposing of the said locomotives, tenders, and cars so by him seized, belonging to said St. Louis and Iron Mountain Railroad Company, but also a writ of subpœna, to be directed to the said Constantine Maguire, Thomas Allen, H. G. Marquand, Sheppard Gandy, Alanson Trask, Sylvester H. Laflin, Gerard B. Allen, Samuel Copp, and the St. Louis
39 and Iron Mountain Railroad Company, thereby commanding
them, and each of them, at a certain time, and under a certain penalty therein, to be limited, personally to appear before your honors in this honorable court, and then and there full, true, direct, and perfect answer make to all and singular the premises, but not upon oath or affirmation, the benefit whereof is expressly waived by your orator; and that on a final hearing of the cause the injunction may be made perpetual; and that your orator have all such other and further relief as to equity belongs and his case requires; and as in duty, &c.

DRYDEN & DRYDEN,
Solicitors for Compl't.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

I, Spencer Trask, complainant in the foregoing bill of complaint against Constantine Maguire and others, defendants, do hereby make solemn oath that the statements contained in said bill of complaint are true so far as the same are stated of my own knowledge, and that those matters, which are stated therein on information and belief, are true according to the best of my knowledge, information, and belief.

SPENCER TRASK.

Subscribed and sworn to by the affiant before me this 14th day of August, A. D. 1871.

[L. S.]

PHILIP A. HOYNE.
U. S. Com'r. N. D. Illinois.

Exhibit "A," referred to in the foregoing bill of complaint, is 40 in the words and figures following, to wit:

41 *"Exhibit A" to bill of complaint.*

[United States stamps of one dollar placed and cancelled upon each bond.]

This indenture, made the first day of August, in the year of our Lord one thousand eight hundred and sixty-seven, between the St. Louis and Iron Mountain Railroad Company of the State of Missouri, party of the first part, and the Farmers' Loan and Trust Company of the city and State of New York, trustees, party of the second part, witnesseth:

That whereas the said party of the first part deem it necessary for extending, completing, paying for, furnishing, and operating their railroad, to borrow money upon their bonds and mortgage as allowed by law; and, therefore, design and intend to borrow the same and to issue and dispose of their bonds in the sum of one thousand dollars each, and in number not to exceed four thousand, payable in the city of New York, August first, in the year 1892, together with interest at the rate of seven per cent. per annum, payable semi-annually according to the interest-warrants attached to said bonds, on the first days of August and February in each year, and to mortgage the corporate property and franchises of the said party of the first part, to secure the payment thereof in the manner hereinafter contained; the said several bonds to be numbered concecutively from number one (1) onwards, and to be certified and countersigned by the trustees, party of the second part, and their successors or successor; and such bonds are to be deemed equally secured by these presents without preference of one over the other, and all of which are in the form following:

42 No. .] [$1,000.

The St. Louis and Iron Mountain Railroad Company. First mortgage bond.

UNITED STATES OF AMERICA,
State of Missouri.

Know all men by these presents that the St. Louis and Iron Mountain Railroad Company are indebted to the bearer in the sum of one thousand dollars, lawful money of the United States of America, which the said company promise to pay to the bearer thereof, on the first day of August, in the year of our Lord 1892, at the agency of the company, in the city of New York, with interest thereon from the first day of August, A. D. 1867, at the rate of seven per cent. per annum, payable semi-annually, in lawful money of the United States, at their said agency in the city of New York, upon the first days of August and February in each and every year, upon presentation and surrender of the annexed coupons, as they severally become due. And the said company further agree with the holder hereof, that the obligation and all rights and benefits arising therefrom may be transferred by general or special endorsement or by delivery, as if the same were a promissory note payable to bearer.

But it is hereby agreed, between the said company and the holder of this bond, that, in case of any default in the payment hereof, the said company will and hereby waive the benefit of any extension, stay, or appraisement laws now existing, or which may hereafter be enacted. This bond is one of a series amounting in the aggregate to four million of dollars, consisting of four thousand bonds of $1,000 each, and
43 numbered from 1 to 4000 inclusive, all of which are of like date
and equally secured by deed of trust or mortgage, dated the first day of August, in the year of our Lord 1867, duly executed and recorded in the proper offices in the State of Missouri, and conveying to the Farmers' Loan and Trust Company of New York, in trust, all the railways of the said company, now constructed or being constructed, and in or to be put in operation and owned by said company within the said State of Missouri, together with all and singular the equipments, appurtenances, franchises, and lands therein mentioned, as by reference thereto will more fully and at large appear.

This bond is to be valid only when authenticated by a certificate endorsed hereon duly signed by the said trustees.

In testimony whereof the said The St. Louis and Iron Mountain Railroad Company have caused their corporate seal to be hereto affixed and *and* the same attested by the signature of their president and treasurer, and the coupons annexed by the name of said treasurer on the first day of August, A. D. eighteen hundred and sixty-seven.

President.

Treasurer.

Now, therefore, *in order to secure the* payment of the principal and interest of said bonds, and in consideration of one dollar to them paid, the St. Louis & Iron Mountain Railroad Company, the party of the first part, herein have given, bargained, granted, sold, conveyed, and transferred and by these presents do give, bargain, grant, sell, convey, and transfer to the said party of the second part, their successors or suc-
44 cessor in the trust hereby created, all and singular the railroad of
the said company, as the same is now constructed and in operation from the city of St. Louis to Pilot Knob, in the State of Missouri, a distance of eighty-seven miles, including also the branch of said railroad now in operation from Mineral Point to Potosi, in Washington County, in said State, a distance of four miles; and also the main line of railroad which the said company are authorized by law to construct, and are now constructing, extending from the said line of completed road to Belmont, in Mississippi County, the said road of the said company constructed and to be constructed, extending from the said city of St. Louis to said Belmont, together with its Potosi branch hereby mortgaged or intended so to be; being in length about two hundred miles (excluding and excepting any branch or branches which may be hereafter projected or constructed,) together with all rights-of-way, depot-grounds, railways, rails, fences, bridges, station-houses, and other buildings, engine-houses, and machine-shops, and all engines, rolling-stock, and other property appertaining to said railroad, now owned, possessed, or acquired, or hereafter to be owned, possessed, or acquired; and all the lands and

real estate to which said company may become entitled through or by
reason of the construction of said railroad, together with all and singular
the rights, privileges, and corporate property and franchises of said rail-
road company, and all appurtenances to the above-described
45 premises belonging or in anywise appertaining; but nothing herein
contained shall be so construed to prevent the said company from
selling or otherwise disposing of any lands or other property of the com-
pany not necessary to be retained for their road, depots, or stations, nor
required for the construction or convenient use of their road, nor from
collecting moneys due to the company on stock subscriptions, or other-
wise, provided said company shall diligently collect and faithfully ap-
ply all such means to the construction and equipment of such road: To
have and to hold the said granted premises unto the said party of the
second part, their successors or successor forever, for the uses and pur-
poses in this indenture expressed; that is to say, that if the interest
on any of the bonds so to be issued shall not be paid by the party
of the first part when the same shall become due, and if such inter-
est shall remain in arrears for three months, or in case the principal of
said bonds or any of them shall not be paid at their maturity, then it
shall be lawful for the said party of the second part, their successors or
successor in the trust, on the written request of the holders of not less
than one-tenth part of said bonds then outstanding, to take possession
of all and singular the premises, property, and franchises so conveyed,
and as the attorney-in-fact, or agent of the said party of the first part,
by themselves, their agent or agents, or substitutes, duly constituted,
have, use, enjoy, and operate the same, making, from time to time, all
needful repairs, alterations, and additions, and after deducting the
46 expenses of such use, repairs, alterations, and additions, and the
costs and charges of such taking of possession, and a reasonable
compensation for the services of the said trustee on such taking of pos-
session, and while so in possession apply the proceeds thereof to the pay-
ment of the principal and interest of said bonds so issued hereunder, re-
maining unpaid and which may have become due. And, upon the written
request of the holders of at least one-third of said bonds issued hereunder
and then outstanding unpaid, shall cause the said premises, real and per-
sonal estate, rights, and franchises to be sold at public auction, in the city
of St. Louis, giving at least twelve weeks' notice of said sale, by publishing
the same in at least one daily newspaper in the city of New York, and in
two daily newspapers in the city of St. Louis, and, on such sale, to make,
execute, and deliver to the purchaser or purchasers thereof a good and
sufficient deed in fee-simple for the same, which shall be a bar against
against the party of the first part, their successors, or assigns, and all
persons claiming under them, of all rights, interests or claims of, in, or
to the said premises, rights, or franchises, or any part thereof. The
amount of the bid or purchase-money of said sale may be paid and satis-
fied in whole or in part by the outstanding mortgage-bonds, or any of
them issued hereunder, and the same shall be taken and received, in whole
or in part payment and satisfaction, by the party of the second part their
successors or successor, according to their value, to be ascertained
47 and determined by the net amount arising from such sale as com-
pared with the amount of outstanding bonds issued hereunder as
aforesaid. And the said party of the second part, after deducting from
the proceeds of the sale the cost and expenses thereof, and of managing
said property, shall apply so much of the proceeds as may be necessary
for the payment of said principal and interest due and unpaid on the
residue of said outstanding mortgage-bonds issued hereunder, and not
used in payment of said bid as aforesaid, and shall pay over the re-

mainder of said proceeds to the party of the first part, their successors or assigns. And in case of any such taking of possession or proceeding to sell the mortgaged premises for default of payment of interest only, if the said party of the first part, before the said bonds shall become payable, and before such sale shall be made, shall pay and satisfy all interest then in arrear on any of said bonds, and shall also pay and discharge all costs, expenses, and disbursements, and pay all said reasonable compensation then and theretofore incurred by reason of such default, the said trustees, upon evidence thereof to their satisfaction, shall thereupon discontinue such proceeding, and restore possession of the mortgaged premises to the said party of the first part, to be held subject to these presents in like manner as if said default had not happened.

48 And the said party of the first part covenant and agree to execute and deliver thereafter, and from time to time, all further reasonable and necessary conveyances, to more effectually carry out the intention of these presents, and particularly for the conveyance of all lands, depot grounds, rights of way, and such other property, including any lands that may be granted or donated to and the construction of said railroad, as may be hereafter acquired by the party of the first part. This trust, and the security hereby intended, extends to such mortgage bonds only as shall be certified and countersigned by the said trustees; and when all said bonds shall be discharged the trust herein created shall cease. And upon the payment of said bonds issued hereunder, principal and interest, the estate hereby granted to the party of the second part shall be void, and the right to the premises hereby conveyed shall revert to and re-vest in said company without any acknowledgement of satisfaction, re-conveyance, re-entry, or other act. The said trustees shall certify and countersign the whole or any part of said four thousand bonds at any time or times when requested so to do by the said party of the first part, the same being first signed by the president and treasurer, and sealed with the seal of said company, and shall deliver the same to the said party of the first part, to be disposed of according to law.

49 The said party of the first part agree to and with the said party of the second part that the amount of bonds issued hereunder shall not exceed in the aggregate the sum of twenty thousand dollars per mile of said road and branches. And it is also especially agreed understood that all of said bonds hereunder issued shall be on an equality, so far as regards security for the payment thereof by these presents, notwithstanding the same may be issued at different times, and to aid such company in the completing, paying for, furnishing, and operating of different parts of said railroad; and none of said bonds shall be entitled to priority. And these presents, and everything herein contained, shall have effect and enure as a security for the payment of all said bonds equally and without preference, whether issued at one and the same time or at different times, and although issued for the purpose of aiding in the completion, furnishing, and operating of different parts or sections of said road. And the St. Louis and Iron Mountain Railroad Company further covenant and agree that the money borrowed or procured for the purposes aforesaid upon the security of said bonds shall be faithfully applied to the completing, paying for, furnishing, and operating of the said railroad by the grading, bridging, ironing, and equipment thereof, and to no other use or purpose, and that such application shall be made with diligence. It is further mutually agreed and declared that until default shall be made in the payment of the said bonds, or some of them, at the time or times when the same shall become payable, the said party of the first part shall have the right to retain, keep, and hold possession of all and singular the prop-

50 erty and franchises above granted and mortgaged without entry or disturbance by the said trustees, under or by virtue of these presents. It is also mutually agreed that the party of the second part, and their successors or successor in the said trust, shall be only accountable for reasonable diligence in the management thereof, and shall not be responsible for the acts or defaults of any agent employed by them, or either of them, and that the said party of the second part, and their successors in the trust, shall be entitled to reserve proper compensation for every labor or service performed, and expense, disbursement, and damage incurred by them in the discharge of their trust in case they shall take possession of said premises, or any part thereof, or manage the same; and that they shall not, in any manner, be liable or responsible for any loss or damage which shall not happen by their own gross neglect or willful misfeasance. And in case of the incapacity or resignation of the said party of the second part, or in case of a vacancy in the trusteeship from any cause, it shall be competent for the party of the first part, within sixty days, to agree upon and appoint another party or person to fill the vacancy so made. And in case of such appointment, it shall be endorsed and made upon this mortgage, or made by some proper act or instrument in writing. Upon the acceptance in writing of the trust by the newly-appointed trustee, he shall be vested with all the estate, rights, and powers, and shall perform all the duties of trustee in like manner as if he had been named in this instrument as trustee.

51 In testimony whereof the said The St. Louis and Iron Mountain Railroad Company, by order of their board of directors, have hereunto affixed their corporate seal and caused the same to be signed by their president and treasurer; and the said trustees have hereunto set their corporate seal and caused the same to be signed by their president the day and year first above written.

Sealed and delivered in presence of—

[SEAL.] THE ST. LOUIS AND IRON MOUNTAIN RAILROAD COMPANY,
By THO. ALLEN, *President.*
L. B. CLARK, *Treasurer.*

Witness:
EDW. A. HARDING.

R. G. ROLSTON,
Pres. of the Farmers' Loan and Trust Co.
G. P. FITCH, [SEAL.]
Sec'y of the Farmers' Loan & Trust Co.

Witness as to R. G. Rolston and G. P. Fitch:
FREDERICK BULL.

STATE OF MISSOURI, *County of St. Louis:*

Be it remembered that, on the first day of August, A. D. 1867, before me, the undersigned, a notary public for and in the county aforesaid, came Thomas Allen, pres't, and L. B. Clark, sec't'ry of the St. Louis and Iron Mountain Railroad Company, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and acknowledged the same to be their act and deed and the act and deed of the St. Louis and Iron Mountain Railroad Co., for the uses and purposes therein mentioned.

52 In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and date before mentioned.

[SEAL.] E. J. CLARKE,
Notary Public

STATE OF NEW YORK,
City and County of New York, ss:

Be it known that, on the fifth day of August, one thousand eight hundred and sixty-seven, before the subscriber, a notary public in and for the State of New York, duly commissioned and sworn, dwelling in the city of New York, personally appeared Roxwell G. Rolston, president, and George P. Fitch, secretary of the Farmers' Loan and Trust Company, of the city of New York, who are personally known to me to be the same persons whose names are subscribed to the foregoing instrument of writing as having executed the same, and acknowledged the same to be their act and deed and act and deed of the Farmers' Loan and Trust Company, of the city of New York, for the uses and purposes therein expressed.

In testimony whereof I have hereunto set my hand and affixed my notarial seal the day and year aforesaid.

[SEAL.] FREDERICK BULL,
Notary Public, 58 Nattss.

Filed and recorded Aug. 8, 1867.

JULIUS CONRAD, *Recorder.*

STATE OF MISSOURI,
County of St. Louis, ss:

I, the undersigned, recorder for said county, hereby certify that the foregoing is a true copy of a mortgage executed by the St. Louis
53 & Iron Mountain Railroad Company, by its president and treasurer, to the Farmers' Loan and Trust Company, of New York, as trustees, as the same remains of record in my office, together with acknowledgements and date of filing.

Witness my hand and official seal date last aforesaid.

[SEAL.] W. C. KENNETT, *Recorder.*

[U. S. 5-ct. revenue stamp.]

Exhibit "O" to bill of complaint.

Exhibit "O," referred to in the foregoing bill of complaint, is in the words and figures following, to wit:

Collector's sale.

By virtue of eleven different tax-bills assessed against the Iron Mountain Railroad, amounting in the aggregate to the sum of thirty-three thousand and eighty-two dollars and fifty-nine cents, and being for State, county, school, and city taxes, for the years 1868, 1869, and 1870, and placed in my hands for collection, according to law, I have levied upon and seized, as the property of the said Iron Mountain Railroad, the following described personal property, to satisfy the said tax-bills, with interest, penalty, and cost, to wit: Locomotives and tenders Nos. 42, 39, 35, 47, 37, 12, 46, 3, 25, 18, 20, 31, 34, J. H. Moxley, Linda, Tho's Allen, passenger-coach No. 6, (first class,) passenger-coach No. 8, (second class,) baggage-car No. 10; and will, on Tuesday, August 17, '71, at the roundhouse of the Iron Mountain Railroad, in the late city of Carondelet, expose for sale and sell the said property to the highest bidder, for ready money, at public vendue, between the hours of nine in the fore-
54 noon and five in the afternoon, of said day.

C. MAGUIRE,
State and County Collector.

ST. LOUIS, *July* 31, 1871.

EXHIBIT D.

City book 2. *Bill* 3675. *State, county, city, and school taxes, for* 1868.

Received, of Iron Mountain Railroad, Tho's Allen in charge, $\frac{\quad}{100}$ dollars, being the amount of State, county, city, and school taxes, for the year 1868, in St. Louis County, on real estate, as below detailed, including polls and personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.	Aggregate of assessed values.	Amount of taxes.
														Dolls. Cts.
												State polls No.		
												Revenue, 0.25; int., 0.25; total, 0.50 p. c.	260,000	1,300 00
												Exempt from county, school, and city tax		
												Subject to county, school, and city tax	260,000	
												County taxes, 0.60 p. c.		1,560 00
												School taxes, 0.40 p. c.		1,040 00
												Special exemption for city		
												City.—general, 1.00; police, 0.20 p. c.; harbor, 0.05; sewer, 0.10; total, 1.35 p. c.		3,510 00
												Lafayette Park taxes.. { 0.10 p. c. 0.20 p. c. }		
										Personal.	260,000		Total..	7,410 00
										Total..	260,000			

Collector.

Deputy.

ST. LOUIS COUNTY, 1868. By

(Indorsed:) True copy from tax-books of 1868. W'm H. Heath, co. auditor, by G. F. Rauser, cl'k.

EXHIBIT E.

City book 4. *Bill* 467. *State, county, city, and school taxes, for* 1869.

Received, of Iron Mountain Railroad, Tho's Allen in charge, $\frac{}{100}$ dollars, being the amount of city & school, State and county taxes, for the year 1869, in St. Louis county, on real estate, as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.		Aggregate of assessed value.	Amount of taxes.
															Dolls. Cts.
												State revenue	0.25 p. c.		
												" interest	0.25 p. c.		
												Total	0.50 p. c.	260, 000	1, 300 00
												Exempt from county, school, & city tax			
												Subject to county, school, and city tax		260, 000	
												County taxes	0.45 p. c.		1, 170 00
												School tax	0.40 p. c.		1, 040 00
												Special exemption for city			
												City—general, ; police, ; harbor, ; sewer, ;			
												total	1.050 p. c.		3, 900 00
												Lafayette Park taxes	0.10 p. c.		
												" " "	0.20 p. c.		
										Personal	260, 000			Total..	7, 410 00
										Total..	260, 000				

Collector.
By *Deputy.*

ST. LOUIS COUNTY, 1869.

(Indorsed:) True copy from tax-books of 1869. W'm H. Heath, co. auditor, by G. F. Rausser, cl'k.

EXHIBIT F.

Carondelet Township. Bill 439. *State and county taxes for* 1869.

Received, of Iron Mountain Railroad, $\frac{}{100}$ dollars, being the amount of State and county taxes, for the year 1869, in St. Louis County, on real estate, as below detailed, and on personal property.

Addition.	Block.	Lot.	Street.	Front.	Deep.	Acres.	100th.	Survey.	Sect.	T'p.	Range.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.	Assessed values.	Amount of taxes.
																			Dolls. Cts.
Finestown	1	6	Broad	60	150											5	State revenue... 0.25 p. c.		
Do.	1	7	do.	60	150											5	State interest... 0.25 p. c.		
Do.	1	8	do.	60	150											5	Total State.... 0.50 p. c.	59,250	296 25
Do.	1	9	do.	60	150											5	Exempt from county taxes.		
Do.	1	10	do.	60	150											5	County taxes... 0.40 p. c.	59,250	266 62.5
Do.	2	10	do.	60	150											5			
S. Carond. sub.	3	....	I. M. R. R.	212.2	100							Depot lane.	I. M. R. R.	I. M. R. R.	Depot lane.	200		Total.	562 87.5
Eilers	6	....	D str.	152.1 102.11	156.5							D str.	Water str.	I. M. R. R.	Miller et al.	1,370			
Do.	6	....	Water.	40	107.11							I. M. R. R.	do.	Miller et al	I. M. R. R.	360			
Do.	6	....	E str.	50	110							I. M. R. R.	Miller	E str.	Miller	450			
Do.	21	....	Main	*300.10	297.4								Whole	block		16,420			
Do.	22	....	do.	*300.10	297.4								d	o		40,420			
															Personal.				
															Total	59,250			

*Machine shops.

Collector.

By Deputy.

ST. LOUIS COUNTY, 1869.

(Indorsed:) True copy from tax-books of 1869. W'm H. Heath, co. auditor, by G. F. Rausser, cl'k.

EXHIBIT G.

Carondelet Township. *Bill* 475. *State and county taxes for* 1870.

Received, of Iron Mountain Railroad, $\frac{}{100}$ dollars, being the amount of State and county taxes, for the year 1870, in St. Louis County, on real estate, as below detailed, and on personal property.

Addition.	Block.	Lot.	Street.	Front.	Deep.	Acres.	100th.	Survey.	Sect.	T'p.	Range.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.	Assessed values.	Amount of taxes.
																			Dolls. Cts.
Finestown	1	6	Broad	60	150											5	State revenue....0.25 p. c.		
Do.	1	7	do.	60	150											5	State interest.....0.25 p. c.		
Do.	1	8																	
			do.	60	150											5	Total State......0.50 p. c.	230	1 15
Do.	1	9	do.	60	150											5	Exempt from county taxes		
Do.	1	10	do.	60	150											5	County taxes..... 0.40 p. c.	230	92
Do.	2	10	do.	60	150											5			
S. St. Louis sub	3	....	I. M. R. R.	212. 2	100							Depot lane.	I. M. R. R.	R'r'd av	Depot lane.	200		Total	2 07
															Personal				
															Total	230			

St. Louis County, 1869. By *Collector.*
Deputy.

(Indorsed:) True copy from tax-books of 1870. W'm H. Heath, co. auditor, by G. F. Rausser, cl'k.

EXHIBIT H.

Carondelot Township. *Bill* 475*a.* *State and county taxes for* 1870.

Received, of Iron Mountain Railroad, $\frac{\quad}{100}$ dollars, being the amount of State and county taxes for the year 1870, in St. Louis County, on real estate, as below detailed, and on personal property.

Addition.	Block.	Lot.	Street.	Front.	Deep.	Acres.	100th.	Survey.	Sect.	Tp.	Range.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.	Assessed values.	Amount of taxes.
																			Dolls. Cts.
Eilers ..	6	....	D	152. 1 147. 11	156. 5	....	....	....	....	....	....	D str	Water str.	I. M. R. R.	Miller et al ..	1, 820	State revenue.... 0 25 p. c.		
Do. ..	6	....	Water ..	40	107. 11	....	....	....	....	....	....	I. M. R. R ..	do. ..	Miller et al	I. M. R. R ...	480	State interest.... 0 25 p. c.		
Do. ..	6	....	E	50	110	....	....	....	....	....	....	do ..	Miller	E str	Miller	500			
Do. ..	7	....	do	50	293. 10	....	....	....	....	....	....	....	....		....	1, 200	Total State..... 0 50 p. c.	79, 940	399 70
Do. ..	21	....	Main	300. 10	297. 4	....	....	....	....	....	....	....	Whole	block	....	22, 160	Exempt from county taxes ..		
Do. ..	22	....	do.	300. 10	297. 4	....	....	....	....	....	....	....		do.	....	52, 160	County taxes, 0.40 p. c.....	79,940	319 76
Do. ..	F	....	Vine	147. 6	150	....	....	....	....	....	....	....	N. W. ½	of block	....	1, 620			
																	School tax, 0.40 %	......	319 76
															Personal	......	City tax, 0.75 %	......	599 55
																			1, 638 77
															Total	79, 940			

By , *Collector.*
, *Deputy.*

ST. LOUIS COUNTY, , 1869.

(Indorsed:) True copy from tax-books of 1870. Wm. H. Heath, co. auditor, by G. F. Rausser, cl'k.

EXHIBIT I.

City-book 4. *Bill* 509. *State, county, city, and school taxes for* 1870.

Received, of Iron Mountain Railroad, Thomas Allen in charge, $\frac{}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1870, in St. Louis County, on real estate, as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.		Aggregate of assessed value.	Amount of taxes.
															Dolls. Cts.
St'r	St. Lo	uis, of	St. Lo	uis ...								State revenue	0.25 p. c.		
												" interest	0.25 p. c.		
												Total	0.50 p. c.	20,000	100 00
												Exempt from county, school, & city tax		20,000	
												Subject to county, school, and city tax			
												County taxes, p. c			
												School tax, p. c			
												Special exemption for city			
												CITY—General, ; police, ; harbor, ; sewer, ;			
												total, p. c.			
												Lafayette-Park taxes, 0.10 p. c			
										Personal	20,000	" " " 0.20 p. c			
										Total ...	20,000			Total ...	100 00

, *Collector.*
By , *Deputy.*

ST. LOUIS COUNTY, , 1870.

(Indorsed:) True copy from tax-books of 1870. Wm. H. Heath, co. auditor, by G. F. Rausser, cl'k.

EXHIBIT J.

City-book 4. *Bill* 508 *I. State, county, city, and school taxes for* 1870.

Received, of Iron Mountain Railroad, $\frac{\quad}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1870, in St. Louis County, on real estate, as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.	Aggregate of assessed value.	Amount of taxes.
863	Carroll..	136.2½ 111.5¼	300.2	....	....	....	Soulard	Front str..	Carroll str.	Main str.	4,770	State revenue.................. 0.25 p. c.		*Dolls. Cts.*
												" interest.................. 0.25 p. c.		
												Total.................. 0.50 p. c.	4,770	23 85
												Exempt from county, school, & city tax..................		
												Subject to county, school, and city tax..................	4,770	
												County taxes, 0.40 p. c..................	....	19 08
												School tax, 0.40 p. c..................	....	19 08
												Special exemption for city..................		
												CITY—General, ; police, ; harbor, ; sewer, : total, 1.50 p. c..................	....	71 55
												Lafayette-Park taxes, 0.10 p. c..................		
												" " " 0.20 p. c..................		
										Personal			Total..	133 56
										Total ...	4,770			

By , *Collector.*
, *Deputy.*

ST. LOUIS COUNTY, , 1870.

(Indorsed :) True copy from tax-books of 1870. W'm H. Heath, co. auditor, by G. F. Rausser, cl'k.

EXHIBIT K.

City-book 4. *Bill* 509*a*. *State, county, city, and school taxes for* 1870.

Received, of Iron Mountain Railroad, $\frac{}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1870, in St. Louis County, on real estate, as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.	Aggregate of assessed value.	Amount of taxes.
														Dolls. Cts.
723	Main..	341	$\frac{320}{370}$ ac's	2 71-100 ac's			Lesperance str	Main str	Picotte str.	Lauterfeld et al..	8, 730	State revenue............ 0.25 p. c.		
867	do. ..	1 97-100					do.	Front str	do.	Main str.........	5, 620	" interest .... 0.25 p. c.		
												Total .... 0.50 p. c.	14, 350	71 75
												Exempt from county, school, & city tax		
												Subject to county, school, and city tax	14, 350	
												County taxes, 0.40 p. c..............	....	57 40
												School tax, 0.40 p. c..............	....	57 40
												Special exemption for city...........		
												CITY—General, ; police, ; harbor, sewer, : total 1.50 p. c....	....	215 25
												Lafayette-Park taxes, 0.10		
												" " " 0.20 p. c........		
										Personal........				
										Total	14, 350		Total..	401 80

By , *Collector.*
, *Deputy.*

ST. LOUIS COUNTY, , 1870.

(Indorsed:) True copy from tax-books of 1870. Wm. H. Heath, co. auditor, by G. F. Rausser, cl'k.

EXHIBIT L.

City book 4. *Bill* 509*b*. *State, county, city, and school taxes for* 1870.

Received, of Iron Mountain Railroad, $\frac{}{100}$ dollars, being the amount of State, county, city, and school taxes, for the year 1870, in St. Louis County, on real estate, as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.	Aggregate of assessed value.	Amount of taxes.
														Dolls. Cts'.
876	Main.	$\frac{103}{65.5}$	473	▪			Soulard.	Main str.	Caroll str.	Kosciusko str.	3, 600	State revenue .... 0.25 p. c.		
												" interest.......................... 0.25 p. c.		
												Total .... 0.50 p. c.	3, 600	18 00
												Exempt from county, school, & city tax.		
												Subject to county, school, and city tax...............	3, 600	
												County taxes, 0.40 p. c.	....	14 40
												School tax, 0.40 p. c.	....	14 40
												Special exemption for city.		
												CITY—General, ; police, ; harbor, ; sewer, ; total, 1.50 p. c	....	54 00
												Lafayette Park taxes, 0.10 p. c.		
												" " " 0.20 p. c.	Total..	100 80
										Personal.				
										Total	3, 600			

, *Collector,*

By , *Deputy.*

ST. LOUIS COUNTY, , 1870.

(Indorsed:) True copy from tax-books of 1870. W'm H. Heath, co. auditor, by G. F. Rausser, cl'k.

EXHIBIT M.

City book 4. *Bill* 508*a*. *State, county, city, and school taxes for* 1870.

Received, of Iron Mountain Railroad, $\frac{}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1870, in St. Louis County, on real estate, as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.	Aggregate of assessed value.	Amount of taxes.	
														Dolls.	*C'ts.*
701	Kosciusko	43. 24. 9	66. 10½ 64	Soulard.	....	...	Soulard	Kosciusko str.	Carroll str.	Soulard.	170	State revenue.......... 0. 25 p. c. " interest.......... 0. 25 p. c.			
706	do.	306. 11	71 76	do.	....	....	Carroll str...	do.	Soulard str.	do.	1, 230	Total .... 0. 50 p. c.	66, 240	331	20
707	do.	308. 0¾	76. 0½	do.	....	....	Soulard str ..	do.	Lafay. str..	do.	1, 230	Exempt from county, school, & city tax....	——		
714	do.	304. 3¾	76. 2¼ 76. 4½	do.	....	....	Lafayette str.	do.	Emmett str	do.	3, 040	Subject to county, school, and city tax....	66, 240		
864	....	308. 9	300. 9	....	....	....	....	Whole block.		....	12, 010	County taxes, 0. 40 p. c..........	....	264	96
865	....	309. 6	300. 9	....	....	....	....	do.		....	10, 830	School taxs, 0. 40 p. c..........	....	264	96
866	....	276. 5	300. 2	....	....	....	....	do.		....	7, 510	Special exemption for city	....		
880	....	465. 8 475. 4	308. 6 308. 9	....	....	....	....	do.		....	11, 180	CITY—General, ; police, ; harbor, ;			
881	....	478. 2	309. 3 309. 6	....	....	....	....	do.		....	10, 040	sewer, ; total, p. c..........	....	993	60
882	....	450. 1	276. 3	....	....	....	....	do.		....	9, 000	Lafayette Park taxes. 0. 10 p. c. " " " 0. 20 p. c.			
										Personal Total..	66, 240		Total..	1, 854	72

, *Collector*.
By , *Deputy*.

ST. LOUIS COUNTY, , 1870.

(Indorsed:) True copy from tax-books of 1870. W'm-H. Heath, co. auditor, by G. F. Rausser, cl'k.

EXHIBIT N.

City book 4. *Bill* 510. *State, county, city, and school taxes for* 1870.

Received, of Iron Mountain Railroad, Tho's Allen in charge, $\frac{}{100}$ dollars, being the amount of State, county, city, and school taxes for the year 1870, in St. Louis County, on real estate, as below detailed, and on personal property.

City block.	Street or avenue.	Front.	Deep.	Addition or survey.	Block.	Lot.	North.	East.	South.	West.	Specified valuation.	Designation of taxes.	Aggregate of assessed value.	Amount of taxes.	
														Dolls.	C'ts.
Rolli	ng s	tock	&	iron	track	......	......	......	......	....	....	State revenue .... 0.25 p. c.			
												" interest .... 0.25 p. c.			
												Total .... 0.50 p. c.	481,000	2,405	00
												Exempt from county, school, & city tax.			
												Subject to county, school, and city tax	481,000		
												County taxes, 0.40 p. c		1,924	00
												School tax, 0.40 p. c		1,924	00
												Special exemption for city			
												CITY—General, ; police. ; harbor, ; sewer, ; total, 1.50 p. c			
												Lafayette Park taxes, 0.10 p. c.		7,215	00
												" " " 0.20 p. c			
										Personal ..	481,000				
													Total..	13,468	00
										Total	481,000				

By , *Collector.*
, *Deputy.*

ST. LOUIS COUNTY, 1870.

(Indorsed:) True copy from tax-books of 1870. W'm H. Heath, co. auditor, by G. F. Rausser, cl'k.

And afterwards, on the sixteenth day of August, A. D. 1871, it being in vacation of said circuit court, the following proceedings were had in this cause, to wit:

Order for subpœna.

SPENCER TRASK, COMPLAINANT,
vs.
CONSTANTINE MAGUIRE ET AL., DEFENDANTS. } In chancery.

This day comes the complainant, by his solicitors, and files his bill in chancery against the defendants in this cause, and on motion of said solicitors, it is ordered that a subpœna in chancery be issued in said cause returnable to rules on the first Monday of October next.

61 And afterwards, to wit, on the eighteenth day of August, A. D. 1871, there was issued out of the clerk's office of said circuit court, the following subpoena in chancery, to wit:

62 *Subpœna.*

MISSOURI DISTRICTS, *sct:*

The president of the United States to Constantine Maguire, The St. Louis and Iron Mountain Railroad Company, Thomas Allen, Sylvester H. Laflin, Gerard B. Allen, Samuel Copp, jr., Sheppard Gandy, Alanson Trask, and Henry G. Marquand, greeting:

You are hereby commanded to be and appear at rules to be held at the office of the clerk of the circuit court of the United States for the districts of Missouri, on the first Monday of October next, at the city of St. Louis, then and there to answer the bill of complaint of
63 Spencer Trask, a citizen of the State New York, filed against you on the sixteenth day of August, 1871. Hereof fail not.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, the eighteenth day of August, 1871.

Issued at office, in the city of St. Louis, under the seal of said court, the day and year last aforesaid.

[L. S.] AUSTIN DRAKE, *Clerk.*

MEM.—The defendants to enter their appearance in this suit in the clerk's office, on or before the day at which the writ is returnable; othwise the bill may be taken pro confesso.

AUSTIN DRAKE, *Clerk.*

Upon said subpœna the marshal of the United States for the eastern district of Missouri made the following return, to wit:

Marshal's return on subpœna.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

Executed this writ by delivering a copy of the subpœna in chancery together with the bill of complaint, to the within-named Constantine Maguire, Aug. 19th, 1871, at St. Louis, within the eastern district of Mo., and by delivering a copy of the subpœna in chancery to the within-named Sam'l Copp, jr., & to the within-named Sylvester H. Laflin, Aug. 26, 1871, at St. Louis, within the eastern district of Mo., and by delivering a copy of the subpœna in chancery to the within-named Gerard B. Allen, September 12, 1871, and by delivering a copy of the sub-

pœna in chancery to A. W. Sober, the acting superintendent of
64 The Iron Mountain Railroad, at St. Louis, within the eastern dis-
trict of Mo., September 12, 1871; the within-named Thomas Allen, Sheppard Gandy, Alanson Trask, and Henry G. Marquand could not be found within the eastern district of Mo.

C. A. NEWCOMB,
U. S. Marshal E. D. Mo.,
By J. SAUER, *Dep'ty.*

And on the said sixteenth day of August, A. D. 1871, the following memorandum of proceedings had in said cause, before the Honorable John F. Dillon, circuit judge, of said court, at chambers, in Davenport, Iowa, of date the fifteenth day of said last-mentioned month and year, was received by the clerk of said court and filed in said cause, to wit:

In U. S. circuit court, Missouri districts.

TRASK, COMPLAINANT,
vs.
CONSTANTINE MAGUIRE ET AL. } At chambers.

Temporary restraining order.

The complainant's application for an injunction was argued before the circuit judge, at his chambers, in the city of Davenport, on this the 15th day of August, A. D. 1871, by Judge Dryden, for the complainant, & by Judge Rombauer, for the respondents; the object being to restrain a sale by the defendant Maguire, as collector of revenue, of cercertain locomotives & rolling-stock of the St. Louis & Iron Mountain Railroad Company, advertised for the 17th inst. It is temporarily ordered
as follows: That, so far as the application for injunction is based
65 upon alleged irregularities in assessments, the judge is inclined
to deny the same; but that so far as the application for an injunction is based upon the alleged exemption of the said road company from taxation by the legislature of the State of Missouri, the judge desires time for consideration, & takes the same under advisement to be decided on or before the first Wednesday in October next, and meantime counsel on either side may file further arguments, & the sale advertised will be temporarily postponed.

August 15, '71. JNO. F. DILLON,
Circuit Judge.

And afterwards, at a regular stated term of the circuit court of the United States for the districts of Missouri, begun and holden at the city of St. Louis, in and for said districts, on the first Monday of October, A. D. 1871; the following further proceedings were had in this cause, on Wednesday, the eighteenth day of October, in said last-mentioned year, to wit:

Hearing of application for an injunction.

SPENCER TRASK, PLAINTIFF,
vs.
CONSTANTINE MAGUIRE ET AL., DEFENDANTS, } In chancery.

This day come the parties, by their respective solicitors, and thereupon the application for an injunction heretofore made herein to the cir-
cuit judge, at chambers, in Davenport, Iowa, was further argued by
66 said solicitors; and the hearing thereof by the court, not being
concluded at the hour of adjournment, it is ordered that further proceedings herein be continued until to-morrow morning.

And afterwards, at said last-mentioned term of said circuit court begun & holden as aforesaid, the following further proceedings were had in this cause on Thursday, the nineteenth day of October, in said year, to wit:

Application further heard, submitted to court, and taken under advisement.

SPENCER TRASK, PLAINTIFF,
vs.
CONSTANTINE MAGUIRE ET AL., DEFENDANTS. } In chancery.

This day come again the parties, by their respective solicitors, and thereupon the arguments of said solicitors upon the application for an injunction herein, were resumed and same concluded, and said application submitted to the court; and the court not being fully advised in the premises takes further time to consider thereof.

And afterwards, at said last-mentioned term of said circuit court begun and holden as aforesaid, the following further proceedings were had in this cause on Saturday, the twenty-first day of October, in said year, to wit:

67 *Injunction denied.*

SPENCER TRASK, PLAINTIFF,
vs.
CONSTANTINE MAGUIRE ET AL., DEFENDANTS. } In chancery.

This day come again the parties, by their respective solicitors; and the court having considered the application for an injunction herein, as prayed for in plaintiff's bill, and being now fully advised in the premises, it is ordered that said application be, and the same is hereby, denied.

68 And afterwards, at said last-mentioned term of said circuit court, the following further proceedings were had in said cause, on Friday, the twenty-seventh day of October, in said year, to wit:

Demurrer filed by defendant Maguire.

SPENCER TRASK, PLAINTIFF,
vs.
CONSTANTINE MAGUIRE ET AL., DEFENDANTS. } In chancery.

This day comes the defendant Constantine Maguire, by his solicitor, and files his demurrer to the bill of plaintiff herein against him.

The demurrer of the defendant Constantine Maguire, filed as aforesaid, is in the words and figures following, to wit:

Demurrer.

UNITED STATES OF AMERICA,
Districts of Missouri:

In the *district* courts of the United States for the districts of Missouri.

SPENCER TRASK
vs.
CONSTANTINE MAGUIRE & AL. }

The demurrer of Constantine Maguire, one of the defendants to the bill of complaint of Spencer Trask, complainant.

This defendant, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, as to so much and such part of the said bill as seeks to obtain a writ of injunction, enjoining this defendant, his servants and 69 agents from seizing and selling the locomotives and other property, belonging to the said St. Louis and Iron Mountain Railroad Company, whereof complainant is a stockholder, on the ground that the capital stock and property of said railroad company are in nowise liable for or chargeable with State and county taxes, this defendant demurs, and, for cause of demurrer, shews—

That if the St. Louis and Iron Mountain Railroad Company, incorporated March 3d, 1851, possessed the immunity from taxation of its capital stock and property, as claimed in complainant's bill, yet complainant does not show that the present St. Louis and Iron Mountain Railroad Company, of which corporation complainant is a stockholder, ever acquired said immunity from said other corporation by purchase or otherwise, or that the corporation of which complainant is a stockholder, ever acquired immunity from taxation for its stock or property, by a valid grant of the legislature of the State of Missouri.

That complainant's bill affirmatively shews that if such immunity from taxation is unrevoked and unrepealed, because irrevocable, it attaches to the stock and property of the St. Louis and Iron Mountain Railroad Company, incorporated by act of March 3d, 1851, a corporation, still in existence, and another and different corporation from the corporation of which complainant is stockholder.

And as to such parts of complainant's bill as set out facts, 70 shewing that the property of the St. Louis and Iron Mountain Railroad Company, (the corporation of which complainant is a stockholder,) lying beyond the limits of the city of St. Louis, has been assessed for purposes of city revenue, and praying that the collection of taxes, so irregularly assessed, may be restrained by a writ of injunction issued by this honorable court, and directed to this defendant, this defendant also demurs, and, for cause of demurrer, shews—

That complainant does not, in said part of his bill, state a case entitling him to the equitable interference of this honorable court, because, if said taxes are illegal, irregular, or excessive, yet the threatened tresspass would neither cause irreparable injury, nor lead to a multiplicity of suits; and because complainant's remedy and the remedy of complainant's corporation is complete, adequate, and exclusive at law, by having the erroneous assessment corrected in the proper tribunal; and because complainant has never requested the directors of the St. Louis and Iron Mountain Railroad Company, the corporation whereof complainant is a stockholder, to take the necessary steps to have such errors corrected in the tribunal having exclusive jurisdiction of the same.

Wherefore, and for divers other reasons, and imperfections, appearing in the said bill, this defendant humbly prays the judgment of this 71 honorable court, whether he shall be compelled to make any answer to the said bill demurred to, as aforesaid.

R. E. ROMBAUER,
Solicitor for Defend. Const. Maguire.

Certificate of counsel and affidavit of defendant waived.

DRYDEN & DRYDEN,
Solicitors for Compl't.

And afterwards at said last-mentioned term of said circuit court the following further proceedings were had in said cause on Tuesday, the thirty-first day of October, in the said year, to wit:

Demurrer filed by defendant The St. Louis and I. M. R. R., also demurrer filed by remaining defendants.

SPENCER TRASK, PLAINTIF',
vs. } In chancery.
CONSTANTINE MAGUIRE ET AL., DEFENDANT.

This day come the parties, by their respective solicitors, and thereupon, the defendant The St. Louis and Iron Mountain Railroad Company, by its solicitor, files its demurrer to the bill of complaint herein, and the defendants Thomas Allen, Samuel Copp, Gerard B. Allen, Sylvester H. Laflin, Alanson Trask, Henry G. Marquand, and Sheppard Gandy, by their said solicitor, also file their demurrer to said bill.

Demurrers submitted.

And said demurrers this day filed as aforesaid, and also the demurrer of the defendant Constantine Maguire, heretofore filed herein, having been submitted to the court, and the court having examined the questions of law arising upon the same, and being now fully advised in the premises, is of opinion that the law upon each and all of said demurre's is for the said defendants; and, in accordance with such opinion,
72 it is ordered that said demurrers be, and the same are hereby, sustained, and the said plaintiff, by his solicitors, not asking further to amend his said bill and saying that he will abide the decision of the court as rendered upon the questions of law arising upon said demurrers of said defendants this day sustained herein:

Final decree.

It is, therefore, now finally ordered, adjudged, and decreed, in accordance with the decision of the court upon the demurrers filed herein by said defendants to the bill of said plaintiff, that the said bill of complaint be, and the same is now hereby, dismissed, and that the said plaintiff pay the costs of this suit and that execution be issued for such costs.

Appeal granted.

And thereupon said plaintiff, by his solicitors, prays an appeal in this cause from the decree rendered herein to the Supreme Court of the United States; which is allowed and said appeal granted.

Bond filed & approved.

And the said plaintiff, by his said solicitors, thereupon, presents to the court his bond of appeal herein, signed by Robert N. Nisbet and L. B. Clark; which said bond is approved by the court.

The demurrer of the defendant The St. Louis and Iron Mountain Railroad Company, filed as aforesaid, is in the words and figures following to wit:

Demurrer of the defendant The St. L. & I. M. R. R. Co.

In the United States circuit court for the districts of Missouri. Oct. term, 1871.

SPENCER TRASK, COMPL'T,
vs.
THE ST. LOUIS & IRON MOUNTAIN RAILROAD Company, impleaded with Constantine Maguire and others, resp'd'ts.

73 The said St. Louis & Iron Mountain Railroad Company, de-

fendant, by W'm R. Donaldson, its solicitor, comes and says that the said bill of complaint of the complainant and the matters therein alleged are not sufficient in law to entitle the complainant to the relief therein demanded, wherefore the respondent prays judgment if it should make any other or further answer to said bill, &c.

W'M R. DONALDSON,
Solicitor for said Respondent.

Certificate of counsel & affidavit of def'ts waived.

DRYDEN & DRYDEN,
Sols. for Comp'l't.

The demurrer of the defendants Thomas Allen, Samuel Copp, Gerard B. Allen, Sylvester H. Laflin, Alanson Trask, Henry G. Marquand, & Sheppard Gandy, filed as aforesaid, is in the words and figures following, to wit:

Demurrer of defendants T. Allen, S. Copp, G. B. Allen, S. H. Laflin, A. Trask, H. G. Marquand, & S. Gandy.

In the United States circuit court for the districts of Missouri. Oct. T., 1871.

SPENCER TRASK, COMP'L'T,
vs.
THOMAS ALLEN, SAMUEL COPP, GERARD B. Allen, Sylvester H. Laflin, Alanson Trask, Henry G. Marquand, & Shepard Gandy, impleaded with Constantine Maguire & another, resp'd'ts.

The said Thomas Allen, Samuel Copp, Gerard B. Allen, Sylvester H Laflin, Alanson Trask, Henry G. Marquand, and Shepard Gandy, respondents, by W'm R. Donaldson, their solicitor, come and say 74 that the said bill of complaint of the complainant and the matters therein alleged are not sufficient in law to entitle the complainant to the relief therein demanded; wherefore the respondents pray judgment if they should make any other or further answer to said bill, &c.

W'M R. DONALDSON,
Solicitor for said Respondents.

Certificate of counsel & affidavit of def'ts waived.

DRYDEN & DRYDEN,
For Comp'l't.

The bond of appeal referred to in the last preceding order and filed as aforesaid, is in the words and figures following, to wit:

Bond of appeal.

Know all men by these presents that we, Robert N. Nisbet and L. B. Clark, are held and firmly bound unto Constantine Maguire, The St. Louis & Iron Mountain Railroad Company, Thomas Allen, Sylvester H. Laflin, Gerrard B. Allen, Samuel Copp, jr., Sheppard Gandy, Alanson Trask, & Henry C. Marquand, in the full and just sum of five hundred

dollars, to be paid to the said Constantine, Thomas, Sylvester H., Gerrard B., Samuel, Sheppard, Alanson, Henry G., and the said railroad company, their heirs, executors, administrators, or assigns ; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 31st day of October, in the
75 year of our Lord one thousand eight hundred and seventy-one.

Whereas lately, at the October term, 1871, of the circuit court of the United States for the districts of Missouri, in a suit depending in said court between Spencer Trask, complainant, and Constantine Maguire, The St. Louis & Iron Mountain Railroad Company, Thomas Allen, Sylvester H. Laflin, Gerrard B. Allen, Samuel Copp, j'r, Sheppard Gandy, Alanson Trask, and Henry G. Marquand, defendants, decree was rendered against the said complainant, and the said complainant Spencer Trask having appealed from the said judgment & decree of said court to the Supreme Court of the United States to reverse the decree in the aforesaid suit:

Now, the condition of the above obligation is such, that if the said complainant, Spencer Trask, shall prosecute said appeal to effect, and answer all damages and costs if he fail to make good such appeal, then the above obligation to be void; else to remain in full force and virtue.

ROB'T N. NISBET. [SEAL.]
L. B. CLARK. [SEAL.]

Sealed and delivered in the presence of—

Approved by—

SAMUEL TREAT,
Judge.

76

77 *Clerk's certificate.*

UNITED STATES OF AMERICA,
Circuit Court for the Districts of Missouri, ss:

I, Austin Drake, clerk of the circuit court of the United States in and for the districts of Missouri, do hereby certify the writing hereto annexed to be a transcript of the record and proceedings in case of Spencer Trask, plaintiff, against Constantine Maguire et al., defendants, as fully as the same remain on file and of record in said case, in my office.

In witness whereof I hereunto subscribe my name, and affix the seal of said court, at office in city of St. Louis, in said districts, this twenty-seventh day of November, in the year of our Lord eighteen hundred and seventy.

[SEAL.] AUSTIN DRAKE,
Clerk of said Court.

78 (Indorsed:) United States circuit court, districts of Missouri. Spencer Trask, plaintiff, against Constantine Maguire et al., defendants. Duly certified transcript of the record and proceedings in the above-entitled cause.

(Indorsement on cover:) No. 565. Spencer Trask, appellant, vs. Constantine Maguire, The St. Louis & Iron Mountain R. R. Co., Thomas Allen, S. H. Laflin, G. B. Allen, et al. Missouri C. C. U. S. Filed 22d December, 1871.

○